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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/609,329	06/27/2003	Troy D. Batterberry	MS1-1479US	7914
22801	7590	09/21/2005	EXAMINER	
LEE & HAYES PLLC 421 W RIVERSIDE AVENUE SUITE 500 SPOKANE, WA 99201			LAU, TUNG S	
			ART UNIT	PAPER NUMBER
			2863	
DATE MAILED: 09/21/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/609,329

Applicant(s)

BATTERBERRY ET AL.

Examiner

Tung S. Lau

Art Unit

2863

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-53 is/are pending in the application.
- 4a) Of the above claim(s) 1-15 and 24-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-23 and 38-53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>See Office Action</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 09/01/2005 has been entered.

Election/Restrictions

Combination/subcombination

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-15 and 24-32 drawn to a method of receiving data without determine the rate of the streaming content, classified in class 702, subclass 79.
 - II. Claims 16-23, 38-48 and 49-53, drawn to automatic resume of data transmission after first transmission rate, classified in class 702, subclass 89.
 - III. Claims 33-37, drawn to a network interface with each multi-birate file stores in streaming content, classified in class 702, subclass 123.

The inventions are distinct, each from the other because of the following reasons:

Inventions of each of groups I-III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, inventions can each be used for their respective uses has separate utility such as different way of getting transmission streaming data over the network. See MPEP § 806.05(d).

Invention I and II are related as combination (invention I) and subcombination (invention II). Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particular of the subcombinations as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because Invention II, the combination as claimed does not required automatic resume of data transmission after first transmission rate. The subcombination (invention II) has separate utility such as automatic resume of data transmission after first transmission rate.

Invention I and III are related as combination (invention I) and subcombination (invention III). Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particular of the subcombinations as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant

case, the combination as claimed does not require the particulars of the subcombination as claimed because Invention III, the combination as claimed does not required network interface with each multi-birate file stores in streaming content. The subcombination (invention III) has separate utility such as network interface with each multi-birate file stores in streaming content.

Invention II and III are related as combination (invention II) and subcombination (invention III). Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particular of the subcombinations as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because Invention III, the combination as claimed does not required network interface with each multi-birate file stores in streaming content. The subcombination (invention III) has separate utility such as network interface with each multi-birate file stores in streaming content.

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II-III, restriction for examination purposes as indicated is proper.

During a telephone conversation with Eric Gash on 9/14/05 a provisional election was made without traverse to prosecute the invention of group II, claim 16-23,

38-48 and 49-53. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-15, 24-32 and 33-37 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Information Disclosure Statement

3. Information Disclosure Statement filed on 03/07/2005, 05/20/2005 and 09/01/2005 are acknowledged by the examiner; A copy of a signed PTO-1449 attached with this office action.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

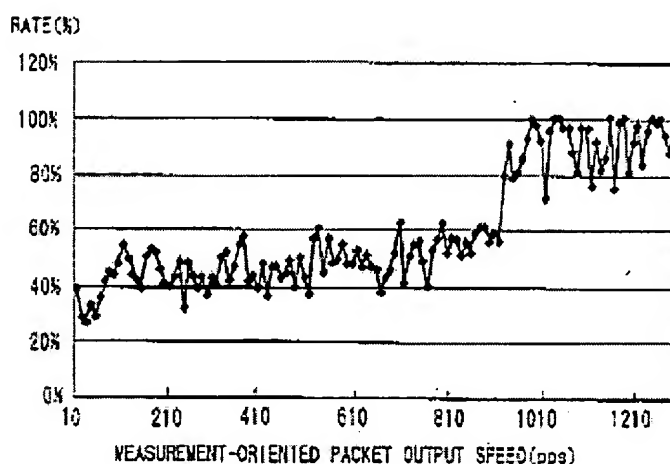
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Claim 16-23, 38-48 and 49-53 are rejected under 35 U.S.C. 102(e) as being anticipated by Aoki et al. (U.S. Patent 6,757,255).

Regarding claim 16:

Aoki discloses a method, comprising: receiving a request from a client to stream content to the client at a first transmission rate streaming content to the client at the first transmission rate (fig. 6, 18); receiving a request from the client to increase the streaming to a second transmission rate for a specified amount of content data (fig. 6, 18); streaming the specified amount of content data to the client at the second transmission rate (fig. 6, 18); and automatically resuming streaming content to the client at the first transmission rate (Col. 7, Lines 25-55) .

FIG.18



Regarding claim 38:

Aoki discloses one or more computer-readable media containing computer-executable instructions that, when executed on a computer, perform the following

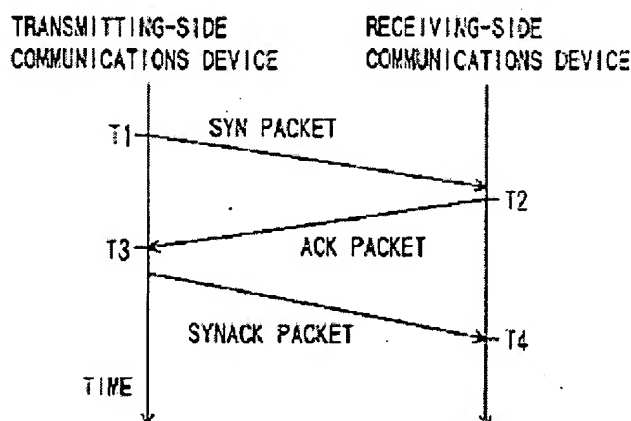
steps: requesting a server to transmit content file data over a network at a first transmission rate while receiving a portion of the content file data at the first transmission rate (Col. 2-3, Lines 56-56, fig. 18), requesting the server to transmit a specific portion of the content file data over the network at a second transmission rate (Col. 2-3, Lines 56-56, fig. 18); receiving the specific portion of the content file data from the server at an actual transmission rate which is less than or equal to the second transmission rate (Col. 2-3, Lines 56-56, fig. 18); determining if the network can viably support transmission of the content file data at the actual transmission rate during receipt of the specific portion of the content file data (fig. 18); if the network can viably support transmission of the content data at the actual transmission rate, requesting the server to transmit subsequent content file data at a rate that is not greater than the actual transmission rate (Col. 2-3, Lines 56-56, fig. 18); if the network cannot viably support transmission of the content data at the actual transmission rate (Col. 2-3, Lines 56-56, fig. 18), automatically receiving subsequent content file data at the first transmission rate; and wherein the subsequent content file data is content file data that is transmitted after the specific portion of content file data has concluded transmission (Col. 7-8, Lines 25-65, fig. 18).

Regarding claim 49:

Aoki discloses one or more computer-readable media containing computer-executable instructions that, when executed on a computer (abstract), perform the following steps: transmitting content file data to a client over a network at a

first transmission rate (fig. 18); receiving a request from the client to transmit a particular amount of content file data to the client at a second transmission rate (fig. 18); transmitting the particular amount of content file data to the client at the second transmission rate (fig. 18); and automatically transmitting content file data subsequent to the particular amount of content file data to the client at the first transmission rate (Col. 7-8, Lines 25-65, fig. 18).

FIG.4

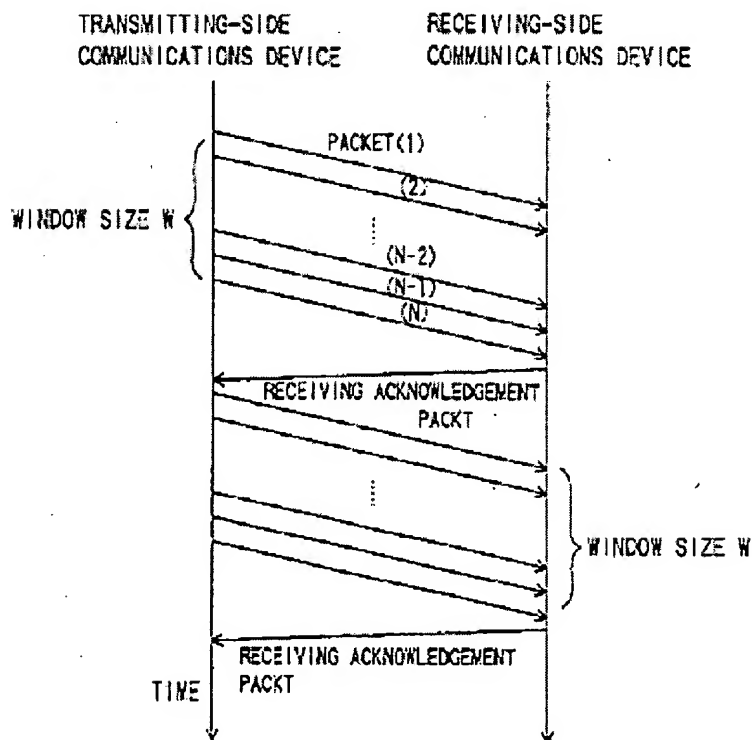


Regarding claim 17, Aoki discloses providing an indication to the client of when the content streamed at the second transmission rate begins (fig. 4); Regarding claims 18, 51, Aoki discloses flagging the data package at the second transmission rate (Col. 9, Lines 17-26); Regarding claim 19, Aoki discloses providing an indication to the client of when the content streamed at the second transmission rate concludes (fig. 18); Regarding claim 20, Aoki discloses the specified amount of content data to be transmitted at the second transmission

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rate is identified as a number of seconds of content data (fig. 4, 6); Regarding claim 21, Aoki discloses content data to be transmitted at the second transmission rate is identified as a number of data packets (fig. 18); Regarding claim 22, Aoki discloses content data to be transmitted at the second transmission rate is identified as a number of bytes of content data (fig. 18); Regarding claim 23, Aoki discloses receiving a request to stream remaining content at the second transmission rate (fig. 18); and transmitting remaining streaming content at the second transmission rate (fig. 18, 8).

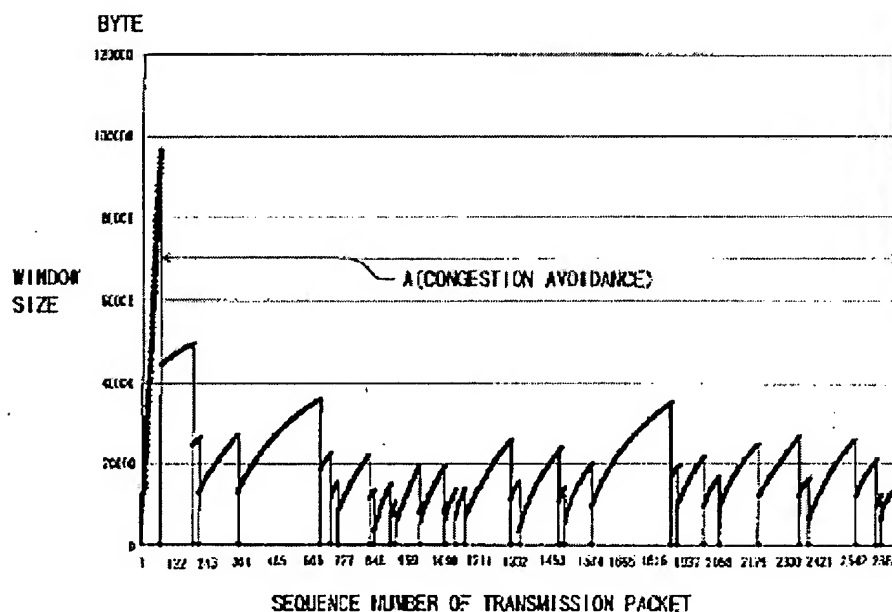
FIG.5



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Regarding claim 39, Aoki discloses further storing the actual rate in a history file associated with the server that contains one or more previous transmission rates at which content file data was adequately received from the server (Col. 10, Lines 37-51, Col. 16, Lines 13-32, fig. 18); Regarding claim 40, Aoki discloses determining the first transmission rate from a history list associated with the server that contains one or more previous transmission rates at which content file data was adequately received from the server (Col. 10, Lines 37-51, Col. 16, Lines 13-32, fig. 18, 4); Regarding claim 41, Aoki discloses determining a median rate included in the history list as the first transmission rate (Col. 3, Lines 10-22); Regarding claim 42, Aoki discloses further calculating available network bandwidth to determine the first transmission rate (fig. 18);

FIG.6



Regarding claim 43, Aoki discloses further detecting when the transmission of the content file data at the actual transmission rate begins (fig. 18);

Regarding claim 44, Aoki discloses specific portion of the content file data is specified ms a number of seconds of transmission of content file data (fig. 18, 4);

Regarding claim 45, Aoki discloses specific portion of the content file data is specified ms a number of bytes of content file data (fig. 18, 4); Regarding claim

46, Aoki discloses specific portion of the content file data is specified as a

number of data packets of content file data (fig. 18); Regarding claim 47, Aoki

discloses the actual transmission rate is a lower rate than the first transmission

rate (fig. 18);); Regarding claim 48, Aoki discloses the actual transmission rate is

a lower rate than the first transmission rate (fig. 18); Regarding claim 50, Aoki

discloses identifying content file data transmitted at the second transmission rate

(fig. 4); Regarding claim 52, Aoki discloses flagging each data packet of content

data transmitted at the second rate (Col. 9, Lines 17-26, fig. 18); Regarding claim

53, Aoki discloses beginning transmission of the content file data at a specified

time (fig. 4).

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tung S Lau whose telephone number is 571-272-2274. The examiner can normally be reached on M-F 9-5:30. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor,

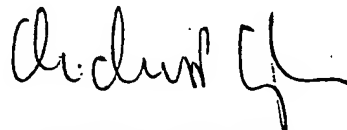
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John Barlow can be reached on 571-272-2269. The fax phone numbers for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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MICHAEL NGHIEM
PRIMARY EXAMINER